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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,901	04/02/2001	Gregory Burns	MS1-095USC4	2420

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EXAMINER	
RYMAN, DANIEL J	

ART UNIT	PAPER NUMBER
2665	

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/824,901	BURNS ET AL.	
	Examiner	Art Unit	
	Daniel J. Ryman	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/17/2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *77-101* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *77-86,88-92 and 94-100* is/are rejected.

7)☒ Claim(s) *87,93 and 101* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Examiner acknowledges Applicant's filing of an RCE on 11/17/2005.

2. Applicant's arguments with respect to claims 77-86, 88-92, and 94-100 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 77-84 and 88-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebane et al. (USPN 5,978,567).

5. Regarding claims 77 and 88, Rebane discloses a method for directing a network system having a content provider which provides content over a network through local service provider (store/forward nodes) to multiple content rendering units (downstream nodes), the network system being directed to: monitor usage patterns to detect highly requested content (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6); identify from the usage pattern a peak time when a plurality of the content rendering units are likely to request the content (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6); schedule delivery of the highly requested content at a scheduled time prior to the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6); receive the highly requested content from the content provider at the scheduled time prior to the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6); and store the highly requested content

received from the content provider for use during the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

Rebane does not expressly disclose that the method is implemented in software; however, Examiner takes official notice that it is well known to implement methods using software since software is more flexible than hardware. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement the method using software.

6. Regarding claim 78, Rebane discloses directing the network system to send at least some of the content from the content provider to the local service provider prior to the peak time without being requested by the content rendering unit (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

7. Regarding claim 79, Rebane discloses directing the network system to send streaming audio or video data from the content provider to the local service provider prior to the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

8. Regarding claim 80, Rebane discloses directing the network system to request the content at a local service provider based on results of identifying the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

9. Regarding claim 81, Rebane discloses directing the network system to monitor usage patterns of the content and schedule early sending of the content at a time prior to the peak time based on the usage patterns (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

10. Regarding claim 82, Rebane discloses directing the network system to serve the content from the local service providers to requesting content rendering units during the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

11. Regarding claim 83, Rebane suggests directing the network system to designate the peak time in terms of discrete time slots as covering an ending portion of at least one time slot and a beginning portion of at least one subsequent time slot and send the content that is likely to be requested in the subsequent time slot prior to the peak time (col. 11, lines 51-54) where "predict which segments are most likely to be needed next" implies a set of time discrete time units in which the most highly used are sent in the time unit before they are needed.

12. Regarding claim 84, Rebane discloses directing the network system to customize a set of prioritized content (mostly highly requested information) according to request made by the content rendering units (previous requests are used to predict future requests), and selectively send the set of prioritized content to the local service provider prior to the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

13. Regarding claim 89, Rebane discloses directing the network system to monitor the usage patterns to detect highly requested streaming audio or video data (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

14. Regarding claim 90, Rebane implicitly discloses directing the network system to modify target specifications which are used by the local service provider to reference the content stored at the content provider, to instead reference the content stored at the local service provider (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6) where a hub node would have to know whether the content was stored locally or needed to be retrieved.

15. Regarding claim 91, Rebane discloses directing the network system to serve the stored content to requesting content rendering units during the peak time (col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

16. Claims 94-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebane et al. (USPN 5,978,567) in view of Sathe et al. (USPN 5,617,417), previously presented.

17. Regarding claims 94 and 98, incorporating the rejection of claims 77 and 88, Rebane discloses each limitation of claims 94 and 98, as outlined in the rejection of claims 77 and 88, except distributing the supplemental content from the content provider to the local service provider over a second network. Sathe teaches, in a communication system, distributing data over a second network (col. 7, lines 47-56) where the second network provides additional bandwidth so that the transmitter can transmit data to a receiver on a path that has beneficial communication characteristics (load, bit error rate, availability or QoS) (col. 2, lines 30-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to distribute the supplemental content from the content provider to the local service provider over a second network in order to ensure that the data is distributed on a network having a beneficial communication characteristic.

18. Regarding claim 95, Rebane in view of Sathe discloses directing the network system to distribute the supplemental content as streaming audio or video data from the content providers to the local service provider over the second network (Rebane: col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6 and Sathe: col. 7, lines 47-56).

19. Regarding claim 96, Rebane in view of Sathe discloses directing the network system to broadcast the supplemental content via the second network which is a satellite network (Sathe: col. 7, lines 47-56).

20. Regarding claim 97, Rebane in view of Sathe discloses directing the network system to serve the distributed content from the local service provider to requesting content rendering units (Rebane: col. 4, lines 22-35 and col. 11, line 19-col. 12, line 6).

Double Patenting

21. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

22. Claims 85, 86, and 92 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Rebane et al. (USPN 5,978,567) in view of claim 1 of U.S. Patent No. 6,275,496. As outlined above, Rebane discloses the limitations of claims 77 and 88, which are the claims upon which claims 85, 86, and 92 depend. However, Rebane does not expressly disclose assigning a time-to-live tag to the content to indicate when the content is expected to be updated. Claim 1 of USPN 6,275,496 teaches assigning a time-to-live tag to the content to indicate when the content is expected to be updated. Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to assigning a time-to-live tag to the content to indicate when the content is expected to be updated.

23. Claims 99 and 100 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Rebane et al. (USPN 5,978,567) in view of Sathe et al. (USPN 5,617,417) in further view of claim 1 of U.S. Patent No. 6,275,496. Incorporating the rejections of claims 94 and 98, Rebane in view of Sathe discloses each limitation of claims 99 and 100, as outlined in the rejection of claims 94 and 98, except assigning a time-to-live tag to the supplemental content to indicate when the content is expected to be updated. Claim 1 of USPN 6,275,496 teaches assigning a time-to-live tag to the content to indicate when the content is expected to be updated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to assigning a time-to-live tag to the content to indicate when the content is expected to be updated.

Allowable Subject Matter

24. Claims 87, 93, and 101 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose or fairly suggest deriving the time-to-live tag based upon a time since the content was last updated.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 7:00-4:30 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel J. Ryman
Examiner
Art Unit 2665

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